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Docket Management System  
U.S. Department of Transportation  
Room PL 401  
400 Seventh Street, S.W.  
Washington, DC 20590-0001

RSPA-2002-13658-74

Subject: Docket No. RSPA-2002-13658 (HM-215E); Appeal of final rule

2003 AUG 27 A 9 00  
U.S. DEPARTMENT OF TRANSPORTATION  
ROOM PL 401

Dear Sir or Madam:

Pursuant to the provisions of 49 CFR 106.110, 106.115, 106.120 and 106.125, this is to appeal a provision in the final rule entitled **Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions**, which was published in the *Federal Register* on July 31, 2003 (68 FR 44992), under Docket No. RSPA-2002-13658 (HM-215E). The provision that is the subject of this appeal is the new paragraph 173.185(k) relating to the packaging of large lithium batteries.

**Interest of Appellant.** The FreedomCAR and Vehicle Technologies Office of the U.S. Department of Energy (DOE), through the Shipping Sub-Working Group (SSWG) of its Advance Battery Readiness Working Group (of which the undersigned is Chair), has been working with RSPA, for several years, to promote the development of international and domestic regulations permitting the transport of large, advance technology lithium batteries that have application as energy storage devices in electric vehicle (EV) and/or hybrid electric vehicle (HEV) applications. These efforts at the international level have lead to decisions by the UN Committee of Experts, and the ICAO Dangerous Goods Panel relating to provisions to facilitate the transport of large lithium batteries - many of which have been implemented in the Docket No. HM-215E final rule. Accordingly, the undersigned, on behalf of DOE and its SSWG, has a direct interest in the amendments relating to the transport of large lithium batteries that were adopted under the Docket No. HM-215E final rule.

**Concern relative to final rule.** While we welcome the amendments relating to lithium battery transport adopted under the final rule, we have a concern with the wording of the new § 173.185(k) - which provides for the packaging of certain "large" lithium batteries in non-UN-standard packaging such as strong outer packaging, crates, and pallets. As worded in the final rule, the last sentence of this paragraph appears to limit this type of packaging *only* for use in transport by cargo aircraft and then only with the approval of the Associate Administer. As written, the language would not permit the transport of large lithium batteries by motor vehicle, rail, and/or vessel, if packaged in this manner. We submit that this is inconsistent with the corresponding provision in the *Thirteenth Revised Edition* of the UN Recommendations, which permits this manner of packaging for all modes of transport. At the same time we recognize that the 2003/2004 edition of the ICAO Technical Instructions, in fact, permits such packaging only for transport by cargo aircraft and only with the approval of the appropriate authority. Accordingly, this appeal requests that the last sentence of § 173.185(k) be revised to clarify that the manner of packaging prescribed in the paragraph is suitable for qualifying "large" batteries transported by

all modes (except for passenger-carrying aircraft), and that for transport by cargo only aircraft the packaging must first be approved by the Associate Administrator.

**Compliance impractical and not in the public interest.** The appellant believes that compliance with the last sentence in § 173.185(k) is not in the public interest in that it does not permit the use of non-UN-standard packaging for the transport of qualifying “large” lithium batteries in any mode of transport other than by cargo-only aircraft. Consequently, when transporting these large batteries, or assemblies of such batteries, by motor vehicle, rail or vessel, UN standard packaging conforming to the Packing Group II performance level must be used. This may not only be impractical for such large batteries and battery assemblies, but is unnecessary for safety reasons since the batteries themselves employ a strong-impact resistant outer casing. Consequently, the greatly increased costs of using UN standard packaging for the transport of these large batteries is not justified for safety purposes. Therefore, the requirement to use such packaging for large batteries and battery assemblies shipped by motor vehicle, rail and vessel is not considered to be in the public interest.

**Requested revisions to final rule.** In consideration of the foregoing, the appellant hereby requests that the last sentence of § 173.185(k) as adopted in the Docket No. HM-215E final rule be revised either:

- 1) To read as was proposed in the notice of proposed rulemaking, that is:  
  
“Prior to its being offered for transportation by cargo aircraft, the packaging must be approved by the Associate Administrator.”  
  
or
- 2) To read as follows:  
  
“Batteries packaged in this manner are not permitted for transportation by passenger aircraft, and may only be offered for transport and transported by cargo aircraft with the prior approval of the Associate Administrator.”

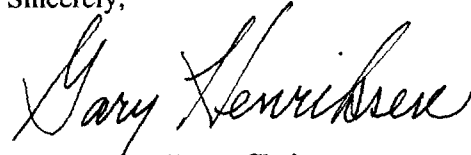
**Rationale for requested revision.** The revision requested would be consistent with the *Thirteenth Revised Edition* of the UN Recommendations in that use of the types of packaging prescribed in the new § 173.185(k) would be acceptable for use in the transport of large batteries by motor vehicle, rail and vessel. Indeed, the proposal to amend the UN packaging provisions for lithium batteries (i.e., Packing Instruction P903) to permit the use of such non-UN-standard packaging and pallets for large lithium batteries had been submitted by the Expert from the United States. At the same time, the revision requested would be consistent with the provisions of the 2003/3004 Edition of the ICAO Technical Instructions in that use of such non-UN-standard packaging for large lithium batteries would be permitted only for transport by cargo aircraft, and then only with the approval of the competent authority (in this case, the RSPA Associate Administrator).

From the point of view of safety, since the batteries themselves must employ a strong impact-resistant outer casing, the requirement to use only UN standard packaging for transport by motor vehicle, rail, and vessel appears to be unnecessary. Furthermore, it appears rather illogical for the HMR to permit the use of non-UN-standard packaging for air transport, but at the same time not to permit such packaging for surface transport (whether with or without approval by the Associate Administrator). Thus, the revision requested herein will not only provide complete consistency with both the provisions of the UN Recommendations and the ICAO Technical Instructions, but would also provide the necessary level of safety in the transport of large lithium batteries by all modes of transport. Interestingly, the wording of the last sentence in § 173.185(k) as it appeared in the NPRM accomplished this goal. No explanation is

provided in the preamble of the final rule as to why the wording of the sentence was revised, thus leading to the problems addressed in this appeal.

Feel free to contact me at (630) 252-4591 if you have questions or need additional information concerning the revision requested in this appeal.

Sincerely,

A handwritten signature in black ink, reading "Gary L. Henriksen". The signature is fluid and cursive, with the first name "Gary" being more prominent and the last name "Henriksen" following in a similar style.

Gary L. Henriksen, Chairman  
DOE Shipping Sub-Working Group &  
Manager, Battery Technology Department  
Argonne National Laboratory

cc: Edward Mazzullo, DHM-10  
Bob Richard, DHM-5  
Joan McIntyre, DHM-12  
Tien Duong, DOE  
Edward Altemos, HMT Associates